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Paper No. 5

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OFFICE OF PETITIONS

In re Application of	:
Alexander Kurganov	:
Application No. 09/777,406	: DECISION DISMISSING
Filed: February 6, 2001	: PETITION
For: Personal Voice-Based Information	:
Retrieval System	:

This is a decision on the Request for Corrected Filing Receipt filed May 14, 2001 and petition under 37 CFR 1.183, filed October 9, 2001 (and again by facsimile transmission on October 22, 2001), requesting a Corrected Filing Date, which are being treated as a petition under 37 CFR 1.10(d) to accord the above-identified application a filing date of February 5, 2001, rather than the presently accorded filing date of February 6, 2001.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on February 5, 2001, pursuant to the requirements of 37 CFR 1.10. Applicant acknowledges that the date of deposit in Express Mail shown on the evidence submitted in the form of a USPS tracking record for label no. EK50 6616 987US is February 6, 2001, but argues that the application was actually deposited in "Express Mail" on February 5, 2001, before the last scheduled pick up for the day.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6 (a). (Emphasis supplied)

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the

"date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pick-up for that day." In addition, the showing must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be the Express Mail Corporate Account Mailing Statement. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the place, date and time of deposit; the time of the last scheduled pick-up for that date; and the date and time of entry in the log.

The petition is not accompanied by the corroborating evidence required by 37 CFR 1.10(d). In this regard, the Track & Confirm Shipment History for the Express Mail package bearing the Express Mail label number shown on the transmittal letter for the instant application indicates that the package was accepted on February 6, 2001 at the "Chicago Central Facility," as opposed to February 5, 2001, the alleged date the package was stated to have been actually deposited in Express Mail. Further, the showing presented is contrary to the statement in the declaration that all mail is delivered to the "Loop Station" and that, on "rare occasions," the mail is delivered to the "Chicago Central Facility" if the "Loop Station" is closed. Additionally, the declaration does not specifically state that the package containing the application papers for this file was in fact deposited at the "Loop Station" on February 5, 2001 and no corroborating evidence in accordance with 37 CFR 1.10(d)(3) has been submitted in support thereof. It is also unclear why two

packages were received at the "Loop Station" and the third was received in the "Chicago Central Facility" if in fact all three packages were supposedly deposited at the same location on the same date as alleged in the declaration. In view thereof, the petition lacks the corroborating evidence of the assertions made in the petition, namely, the petition lacks any corroborating evidence that came into being within one business day of the alleged date of deposit and, secondly, the evidence submitted (the Express Mail Shipping History) indicates that the package was deposited on February 6, 2001, and not February 5, 2001, as alleged. Accordingly, the application is entitled to the filing date of February 6, 2001, the date accorded the instant application.

In view of the above and since the papers filed are not accompanied by the corroborating evidence required by the rule, the petition must be dismissed.

It appears from the statements presented that the Express Mail package asserted to have been deposited with the USPS on February 5, 2001 was not deposited directly with an employee of the USPS. In this regard, petitioner's attention is directed to 37 CFR 1.10(b), which reads, in part:

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

It is unfortunate that applicant chose to deposit the patent application in Express Mail without immediately obtaining an Express Mail receipt showing the desired date of deposit.

Any request for reconsideration should be filed within TWO MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
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This application is being forwarded to Technology Center AU 2661 for examination in due course.

Telephone inquiries concerning this matter may be directed to Latrice Bond at (703) 308-6911.



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